

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KOON GEE NEOH,
EN-TANG KANG, SOCK WEE NG,
and JEYAGOWRY T. SAMPANTHAR

Appeal 2007-4405
Application 09/895,153
Technology Center 1700

Decided: September 27, 2007

Before CHUNG K. PAK, CHARLES F. WARREN, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMANDING TO THE EXAMINER

We remand the application to the Examiner for consideration and explanation of issues raised by the record. 37 C.F.R. § 41.50(a)(1) (2007); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 5, August 2006).

The Official electronic records of the USPTO contain the following documents for this application:

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Appeal Brief filed June 6, 2006.

Examiner's Answer mailed August 1, 2006, "in response to the Appeal Brief filed June 6, 2006."

Reply Brief filed September 26, 2006.

Examiner's Communication of September 29, 2006, acknowledging receipt and entry of the Reply Brief filed September 26, 2006.

Board Order Returning Undocketed Appeal to Examiner entered November 22, 2006, for correction of the Appeal Brief with respect to certain procedural requirements.

Substitute Appeal Brief filed December 29, 2006, complying with Order.

Examiner's Answer electronically delivered April 5, 2007, "in response to the appeal brief filed June 6, 2006," with no change in content from the Answer mailed August 1, 2006.

Reply Brief filed June 5, 2007, stating "[t]his refers to the Examiner's Answer dated April 5, 2007," with different substantive content than the Reply Brief filed September 26, 2006.

Examiner's Answer electronically delivered June 7, 2007, "in response to the appeal brief filed June 6, 2006," with no change in substantive content from the Answer mailed August 1, 2006, adding only information with respect to a procedural requirement.

Reply Brief filed August 6, 2007, stating "[t]his refers to the Examiner's Answer dated June 7, 2007," with different substantive content than the Reply Brief filed September 26, 2006, and the Reply Brief filed June 5, 2007.

Examiner's Communication electronically delivered August 13, 2007, acknowledging receipt and entry of the Reply Brief filed August 6, 2007.

The Official electronic record does not indicate the Examiner acknowledged the Reply Brief filed June 5, 2007, in any respect.

The following rules apply to the filing of a reply brief, the Examiner's response to a reply brief, and a supplemental reply brief.

37 C.F.R. §41.41 (2005)

(a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

37 C.F.R. §41.43 (2005)

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

....

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

It is clear from the record that the Examiner's Answers delivered to Appellants on April 5, 2007, and June 7, 2007, constituted a "supplemental examiner's answer" within the meaning of 37 C.F.R. § 41.43(a)(1) that requires the filing of a supplemental reply brief under 37 C.F.R. §41.43(b). *See also* MPEP § 1208 (8th ed., Rev. 5, August 2006). Thus, the Reply Briefs filed June 6, 2007, and August 8, 2007, was improperly submitted. Further, the Examiner's entry and consideration of the Reply Brief filed August 8, 2007, was improper. The Examiner has not responded to the Reply Brief filed June 6, 2007.

Accordingly, the Examiner is required to take appropriate action consistent with current examining practice and procedure to clarify the record with respect to the status of the Reply Brief filed June 6, 2007, which has not been acknowledged by the Examiner, and with respect to the status

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of the Reply Brief filed September 26, 2006, and the Reply Brief filed August 6, 2007, under the above rules, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.

This remand is *not* made for the purpose of directing the Examiner to further consider a ground of rejection.

This remand is *not* made for the purpose of directing the examiner to further consider the grounds of rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) (2005) does not apply.

We hereby remand this application to the Examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

REMANDED

tc/ls

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